



## Appeal Decision

Site visit made on 25 June 2020

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

an Inspector appointed by the Secretaries of State

Decision date: 27 July 2020

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### Appeal Ref: APP/HS2/6

**Land adjacent to the West Coast Main Line (Network Rail Lines) located between the A400 Hampstead Road Bridge and Granby Terrace Bridge, north west of Euston Station, London NW1**

- The appeal is made under paragraph 22(1), Schedule 17 of the High Speed Rail (London to West Midlands) Act 2017 (the Act) against the refusal of a submission made under Schedule 17 of the Act.
  - The appeal is made by High Speed Two Limited (HS2 Ltd) against the decision of the Council for the London Borough of Camden.
  - The Submission Ref 2019/6302/HS2, dated 18 December 2019, was refused by notice, dated 26 March 2020.
  - The Submission made was for the approval of plans and specifications for the Euston Throat Retained Cut.
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### Decision

1. Under paragraph 22(2), Schedule 17 of the Act, the appeal is allowed and the Submission Ref 2019/6302/HS2, dated 18 December 2019, for a Schedule 17 submission for the approval of plans and specifications for the Euston Throat Retained Cut is approved.

### Procedural Matters

2. I have been appointed, under paragraph 23(1), Schedule 17 of the Act by the Secretaries of State for Transport and for Housing, Communities and Local Government to determine the appeal on their behalf. I have followed the procedures set out in the High Speed Rail (London – West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017, March 2017.

### Main Issues

3. The main issues are whether the proposed parapet walls can lawfully be considered as part of the earthworks, in terms of Schedule 17 of the Act; and, if so, the effect of the design of the western parapet wall on the character and appearance of the surrounding area and the setting of Regent's Park Conservation Area (CA).

### Relevant Legislation and Guidance

4. Under section 20(1) of the Act planning permission is deemed to be granted for the construction of Phase One (London to West Midlands section) of the High Speed Two (HS2) development as authorised by the Act. Section 20(3)

specifies that Schedule 17 to the Act imposes conditions on that deemed planning permission.

5. Paragraph 22(2), Schedule 17 of the Act states:

*'On an appeal under this paragraph, the appropriate ministers may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against, but may only make a determination involving -*

*(a) the refusal of approval, or*

*(b) the imposition of conditions on approval,*

*on a ground open to that authority.'*

6. The Submission relates to earthworks and walls. Accordingly, paragraph 3 of Schedule 17 sets out the relevant conditions subject to which planning permission is deemed to have been granted under the Act. These include:

(i) Under paragraph 3(1), the Council is identified as a qualifying authority in the High Speed Rail (London – West Midlands) (Qualifying Authorities) Order 2017.

(ii) Paragraph 3(2) applies to development to the extent that it consists of the construction of any of the following— (b) earthworks; (e) fences or walls.

(iii) Paragraph 3(4) states that: *'The relevant planning authority may, on approving a plan or specification for the purposes of this paragraph, specify any respect in which it requires there to be submitted for approval additional details of the operation or work which gives rise to the need for approval under sub-paragraph (1).'*

(iv) In respect of the works relating to Euston Throat Retained Cut, paragraph 3(6) provides that *'The relevant planning authority may only refuse to approve plans or specifications for the purposes of this paragraph on a ground specified in relation to the work in question in the following table.'*

The table states for-

Earthworks:

*'that the design or external appearance of the building works ought to, and could reasonably be, modified—*

*a) to preserve the local environment or local amenity,*

*b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or*

*c) to preserve a site of archaeological or historic interest or nature conservation value.*

*If the development does not form part of a scheduled work, that the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits'*

Fences and walls (except for sight, noise and dust screens):

*'That the development ought to, and could reasonably, be carried out elsewhere within the development's permitted limits.'*

and

*'In this paragraph-..... "earthworks" means terracing, cuttings, embankments or other earth works;'*

7. Paragraph 26(1) of Schedule 17 to the Act empowers the Secretary of State to give guidance to planning authorities in the exercise of their functions under that Schedule. Paragraph 26(2) states that a *'planning authority must have regard to that guidance'*. In exercise of this power, the Secretary of State published Guidance in February 2017.

### **Reasons**

8. The Submission for the approval of plans and specifications for the Euston Throat Retained Cut stated that it comprised the following:
  - a) *a western retaining wall structure, running between the northern extent of the extended Hampstead Road Bridge and the southern extent of the extended Granby Terrace Bridge;*
  - b) *an eastern retaining wall, also running between the northern extent of the extended Hampstead Road Bridge and the southern extent of the extended Granby Terrace Bridge, which will support the adjacent West Coast Mainline (Network Rail) tracks due to the level difference with the HS2 tracks;*
  - c) *a concrete slab base, with tension piles (beneath / supporting the HS2 tracks) in between the eastern and western retaining walls, excluding the base slab and tension piles;*
  - d) *a 1.8m reinforced concrete containment parapet (location only for approval) will be constructed on top of the entire length of the western retaining wall structure, to ensure that the required safety and security provision is in place for the HS2 railway to be located within the retained cut below; and*
  - e) *a 1.8m reinforced concrete parapet (location only for approval) will be constructed on top of the eastern retaining wall, to provide separation between the West Coast Mainline tracks and the HS2 tracks at the lower level.*
9. The location of the Works is between the A400 Hampstead Road Bridge and Granby Terrace Bridge, to the north west of the existing Euston Station. The Council's reasons for refusal state that the design and external appearance of the western elevation of the Euston Throat Retained Cut above ground parapets ought to be modified to take account of the fact that the site is in a prominent location which is highly visible from the neighbouring Regent's Park CA. This appears to me to be the only ground given for refusal.
10. The Appellant has accepted that the proposed 1.8m high parapet wall would form an essential component of the western retaining wall structure. However, whilst the proposed retaining walls are appropriately defined as 'earthworks' under the Act, as they form part of the earthworks themselves, the proposed parapet walls are different in that they act as a restraint in terms of public safety and are not part of the earthworks. As such, the Submission makes it clear that their location is the only matter for which approval is sought as part of the Submission.

11. I accept that the parapet walls have been designed as a direct extension above ground of the retaining walls, being a continuation of the reinforced concrete structure. However, the submitted plans show that they are not serving any earthworks function. The Appellant has indicated that it could have submitted separate submissions for the retaining walls and parapet walls, which the Council has acknowledged. As the parapet walls could have been treated separately from the retaining walls and do not have any earthworks function, I find that they should be considered as a 'wall' under paragraph 3 of Schedule 17 to the Act. As such, the Council may only refuse to approve plans and specifications for them on the basis that the development ought to, and could reasonably, be carried out on land elsewhere within the development's permitted limits. The Council has not refused the Submission on this basis.
12. The Council has claimed that it is not appropriate to consider the individual elements of a proposed development, such as walls alone, when those walls form part of the totality of operations. Based on this, it has considered that the totality of the proposed development, that includes the parapet walls, falls within the definition of earthworks. Therefore, it has concluded that the Submission should be considered under earthworks in paragraph 3(6) of Schedule 17.
13. It supports the above argument by citing case law<sup>1</sup>. However, the 3 cases referred to involve significantly different circumstances from those of this appeal. They are all regarding the Town and Country Planning Act, whereas this appeal is in relation to Schedule 17 of the Act. Also, they involve either a different type of development from the appeal development or development that is defined as a single operation. I am satisfied that a single submission under Schedule 17 can cover both earthworks and fences or walls as separate operations that would fall to be judged according to the respective criteria in paragraph 3(6). In the case of the appeal proposal, the parapet walls are a separate operation to the earthworks and can be dealt with under a different paragraph of the Schedule. Therefore, no direct comparisons can be made between the case law cited and the current appeal, which I have dealt with on its own individual merits in the light of Schedule 17 of the Act.
14. The HS2 London-West Midlands Environmental Statement (ES) provides an assessment of the visual impact of HS2 and its effect on landscape and cultural heritage, including Regent's Park CA, together with avoidance and mitigation measures. The ES was considered by the Parliamentary Select Committee when Phase One was approved through the passage of the Act and therefore these matters should also have been considered when the Act was passed. HS2 Ltd, as the nominated undertaker, is contractually bound to comply with the controls set out in the Environmental Minimum Requirements. These controls, along with the powers contained in the Act and the Undertakings and Assurances, will ensure that impacts which have been assessed in the ES (as amended) will not be exceeded.
15. The Submission provides an explanation of the design criteria and rationale for the proposed structures. It refers to other options that had been considered, including brick cladding and pictorial cast forms, and the reasons for preferring the proposed design. It identifies the Regent's Park CA as being one of the

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<sup>1</sup> *Fayrewood Fish Farms Ltd v The Secretary of State for the Environment and Another* [1984] JPL 267; *Sage v. Secretary of State for the Environment, Transport and the Regions and another* [2003] 1 WLR 983; and *R (Dennis) v. Sevenoaks District Council* [2005] 2 P&CR 4

designated heritage assets in the area, at 75m from the site, when considering the environmental characteristics of the area. It also outlines indicative mitigation. Therefore, I am satisfied that the Appellant has carried out a thorough and detailed assessment of the impact of the proposed structures, including the parapet walls, on the local environment and local amenity and sites of historic interest.

16. The Council has indicated that the proposed finish of the concrete ribbed wall would not respect the local character or integrate well with the local street context. As a result, it suggests that the proposal would fail to preserve local amenity or local environment, contrary to Schedule 17. It also is concerned that the parapet wall would be visible from Regent's Park CA and the use of concrete would be out of keeping with the materials, colours and finishes of the buildings and structures in the eastern part of that CA, resulting in an adverse impact on the setting of the CA.
17. To address the above concerns, the Council has proposed a condition to be imposed, pursuant to paragraph 3(4) of Schedule 17, requiring the Appellant to submit additional details of the street facing element of the western retaining wall, and to carry out the works in accordance with such details as are approved by it. However, it has not provided a Landscape and Visual Impact Assessment or any other detailed assessment of the impact of the proposal, other than that given in its Officer's Delegated Report to support its recommended brickwork finish to the parapet wall. The only detailed analysis of the relevant area it has provided is the Appraisal and Management Strategy for Regent's Park CA. Furthermore, such a condition would be outside the scope of paragraph 3(4), which limits a condition to '*details of the operation or work which gives rise to the need for approval...*', as I have found that the parapet walls should be considered as 'walls', which are limited to just the consideration of their location.
18. For the reasons given, I have found that the parapet walls are a 'wall' rather than being part of the 'earthworks', as defined in Schedule 17 of the Act. As such, they cannot lawfully be considered as part of the earthworks, and the effect of their design on the character and appearance of the surrounding area and the setting of Regent's Park CA are not matters that are within the scope of the Council to consider in its determination of the Submission. Therefore, having taken account of all matters raised, I conclude that the appeal should succeed.

*M J Whitehead*

INSPECTOR